

AAT rejects claim for long term physiotherapy in RSI case *Bennett and Comcare [2017] AATA 1269*

Key Point

- Unless an employee can show physiotherapy or similar allied health treatments are obtained 'in relation to' an **accepted** injury, the Tribunal will not support funding for it.

Background

Ms Bennett had an accepted claim for a “*repetitive strain injury (right) arm*” sustained on 15 March 1985 and had been in receipt of compensation for physiotherapy expenses since 1993.

On 26 April 2016, Ms Bennett provided a physiotherapy treatment notification plan for “*3 to 5 hands on sessions every 2 to 3 months due to flare up of chronic neck and shoulder pain*”. Comcare rejected that claim on the basis that the proposed physiotherapy treatment was not obtained in relation to the accepted injury as required by section 16 of the *Safety, Rehabilitation and Compensation Act 1988 (Cth)* (SRC Act) and was inconsistent with the principles set out in the Clinical Framework for the Delivery of Health Services.

The Tribunal was required to consider:

- Whether Comcare was liable to pay compensation under section 16 of the SRC Act in respect of Ms Bennett’s accepted injury; and,
- Whether the scope of the accepted injury could be widened to include neck and shoulder symptoms due to a prior Tribunal decision relating to Ms Bennett’s accepted injury: *Re Rosalie June Bennett and Commission of the Safety, Rehabilitation and Compensation of Commonwealth Employees [1991] AATA 331*.

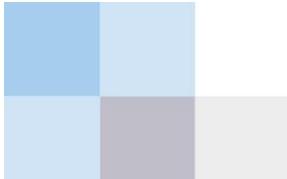
The Law

Section 16(1) provides that compensation is payable in respect of the cost of medical treatment obtained in relation to an accepted injury, being treatment that it was reasonable for an employee to obtain in the circumstances, of such an amount as Comcare determines is appropriate for that medical treatment.

Ms Bennett’s solicitors relied on paragraph [10] of the High Court decision in *Canute v Comcare [2006] HCA 47* which states that “*the definition of ‘injury’ is expressed in terms of the resultant effect of an incident or ailment upon the employee’s body*”.

Conclusion

Ms Bennett gave evidence that her physiotherapy treatment was aimed at relieving tightness from the top of her right shoulder and into the trapezius muscle.



Dr Evan Jenkins (GP) and Dr Farham Shahzad (Consultant Occupational Physician) both gave evidence that the majority of Ms Bennett’s complaints were centred on her neck and shoulder, rather than her right arm, and that ongoing physiotherapy was not curative and would possibly create a dependency.

Ms Bennett argued that Comcare was unable to contend that treatment for Ms Bennett’s neck and shoulder was not ‘in relation to’ her injury because the injury had always, since 15 March 1985, involved continuous symptoms of pain or aching in the right shoulder, neck and arms, and headaches. Further, Comcare’s focus on the diagnosis of Ms Bennett’s injury was said to be misguided given that the diagnosis was “*the best guess of the aetiology, which may change over time*”, while the injury was the result of the work-related incident.

The Tribunal determined that it only had jurisdiction to consider whether the proposed physiotherapy treatment was ‘in relation to’ a “*repetitive strain injury to the right arm*”. On this basis, it was held that the proposed physiotherapy was not ‘in relation to’ the accepted injury as there was no evidence indicating that her neck and shoulder symptoms were related to the accepted injury.

The Tribunal also rejected Ms Bennett’s argument that the previous Tribunal decision in relation to her neck and shoulder symptoms bound it to find that she continued to suffer from that same injury.

Lessons Learnt

The Tribunal’s decision confirms that in order to attract liability, medical treatment must be ‘in relation to’ an accepted injury and that unless a clear causal connection can be established between secondary symptoms suffered by an applicant and the original injury, liability will not be extended. Further, particularly in cases of long term physiotherapy, the Tribunal is likely to accept that treatment is not reasonable based on evidence that long term physiotherapy is not curative.

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